



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: OCTOBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 624132

PRESENT: GERALDINE A. REILLY, RANDALL T. DOUGLAS MEMBERS

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective August 17, 2020, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed June 1, 2022 (), the Administrative Law Judge granted the claimant's applications to reopen A.L.J. Case No. 021-50362 and 021-26875, overruled the Commissioner of Labor's objection as to timeliness and overruled the initial determination of voluntary separation.

The employer appealed the Judge's decision to the Appeal Board, insofar as it overruled the Commissioner of Labor's objection as to timeliness and the initial determination of voluntary separation.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made with respect to the Commissioner of Labor's objection as to the timeliness of the claimant's hearing request. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issue of the Commissioner of Labor's objection as to timeliness, are supported by the record, and are adopted as the findings of fact and the opinion of the Board.

Based on the record and testimony in this case, however, as to the initial determination of voluntary separation, the Board makes the following:

FINDINGS OF FACT: The claimant was employed as a part-time building inspector for over fifteen years for a municipality. He worked two days per week, approximately seven hours per day. The claimant has health issues, including high blood pressure, heart disease, lung, and immunity issues. As of March 7, 2020, the claimant had been working at home, processing paperwork due to the pandemic.

In July of 2020, the employer, deemed essential by the Governor, resumed in-home inspections. The claimant was afraid to perform in-person work due to his concern about contracting COVID-19. The claimant's doctor did not advise the claimant that he could not work and did not advise him that he should resign. Nor did the claimant provide the employer with medical documentation to substantiate any increased risk for Covid-19. In lieu of resuming his employment, the claimant requested and was granted a leave of absence from work from July 6, 2020, through August 17, 2020. On August 7, 2020, the claimant asked to extend his leave beyond August 17, 2020; the employer did not respond. The claimant did not contact the employer after August 7, 2020, nor did he return to work after July 1, 2020. Continuing work was available to the claimant had he returned from his leave that ended August 17, 2020. After July 6, 2020, the claimant traveled to Costa Rica where he owns a home for vacation and rehabilitation purposes.

The claimant applied for unemployment insurance benefits on August 17, 2020, and his claim was made effective as of June 29, 2020. The claimant did not recall filing for unemployment insurance benefits, nor did he recall giving the Department of Labor any personal information necessary to complete a claim for benefits. He contacted the Department of Labor when he failed to receive any unemployment insurance benefits.

OPINION: The credible evidence establishes that the claimant ceased working for the employer as of July 1, 2020, due to his fear of contracting COVID-19. Although the claimant contends that his purported high-risk health status prompted him to resign, we find it significant that no medical professional advised the claimant to cease work. At hearing, the claimant did not produce any medical documentation or testimony as to his specific medical conditions or treatments, contemporaneous with his separation, to validate his

generalized concern for his health. A general fear of contracting COVID-19 does not provide a claimant with good cause to leave continuing work. We note that in similar cases, the Appeal Board determined that fear, without more detailed and substantive testimony from the claimant as to the basis of the fear, is insufficient to establish good cause to leave continuing employment. (See Appeal Board Nos. 613258, 615642, 616546 and 617227). We find it telling, too, that despite the claimant's purported fear of contracting COVID-19, the claimant elected to travel to Costa Rica after July 1, 2020, for a vacation. Hence, we conclude that the claimant's failure to resume his employment constitutes a voluntary leaving of employment without good cause. Accordingly, we conclude that the claimant's separation was under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is affirmed in part, and reversed in part.

The Commissioner of Labor's timeliness objection is overruled.

The initial determination, disqualifying the claimant from receiving benefits, effective August 17, 2020, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER

RANDALL T. DOUGLAS, MEMBER